IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 441 OF 2002

1. Shri Shaniwar Laxman Patil)
2. Smt. Draopadi Jairam Bhoir)
3. Smt. Shakuntala Anant Patil)
alias Wayale)
4. Smt. Muktabai Jejeram Patil)
5. Shri Kapil Jejeram Patil)
6. Smt. Kavitha Jejeram Patil)
7. Smt. Tarabai Pundlik Patil)
8. Smt. Ratnabai Abimanu Patil)
Adults, Indian Inhabitants,)
residing at village - Dativali,)
post - Dive, Taluka and)
District- Thane.) ...Petitioners.

V/s

1. Central Railways)
(Through Deputy Chief)
Engineer (C), II) Central)
Railway, Dadar, Mumbai- 400028)
)
2. The Railways (& Parliamentary)
Affairs) Ministery, Governmnt)
of India, New Delhi.)
)
3. The Collector,)
(Through District Officer),)
the Office of the District)
Officer, Thane, Maharashtra.)
)
4. Thane Municipal Corporation)
Thane, District - Thane.) ...Respondents.

Mr. Rajaram P. Lote for the petitioners.

Mr. A.N.Samant for respondent No.1 & 2.

Mr. V.S. Gokhale, GP for respondent No.3

Mr. R.S. Apte for respondent No.4.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 24th August, 2005.

ORAL JUDGMENT: (Per R.M.S. KHANDEPARKAR, J.)

1. Heard.

2. The Petitioners, by the present Petition, seek declaration that the respondents are not entitled to enter into and use the land bearing Pardi No.1, situated at Datiwali, Taluka Thane, District Thane for any of the Railway purposes, unless the land is acquired under due process of law and further that the respondents are not entitled to disturb the petitioners' commercial premises situated in the said land, unless the alternate plot is made available and compensation is paid to the petitioners.

3. It is the case of the petitioners that they have constructed commercial premises. That, they are carrying out milk business in the said land described above and are the owners in possession of the said entire land as is confirmed from 7 x 12 Extract issued by the Revenue Authorities. It is their further case that the petitioners were surprised when the respondents started laying down additional railway track by the side of the existing railway track which

connects Jawaharlal Nehru Port Trust towards Panvel and the said additional track has been laid down in the said land, contending that the respondents are carrying out the said work without acquiring the land under due process of law and without offering alternate premises to the petitioners for their commercial purposes and, therefore, the respondents have acted high-handedly in dispossessing the petitioners from the land in question.

4. On the other hand, it is the case of the respondents that under an award dated 21/02/1975 and 18/09/1986, the land at Datiwali Village in Taluka and District Thane was acquired for Diva Bassein Road, Rail Link Project. The consent letter was obtained on 19/09/1973 from the owners of the land for taking possession of the land which was sought to be acquired under the award dated 21/02/1975. While the land which was sought to be acquired under the award dated 18/09/1986, the possession thereof was taken on 20/11/1986. The land so acquired was measured by the Taluka Inspector of Land Record, Thane pursuant to the request in that regard by the Railway Administration under letter dated 22/09/1999. It is, however, stated in the affidavit-in-reply that it was not clear as to whether the Pardi No.1 claimed by the petitioners

forms part of any of the survey numbers of the lands which were acquired under the said awards.

5. Considering the rival contentions in the matter, this Court by Order dated 01/08/2003 directed D.I.L.R./T.I.L.R., Thane to certify the land bearing Pardi No.1, situated in Village Datiwali, Taluka & District Thane and more particularly described in para 3 of the Petition and to submit a report in that regard. It was also directed that the survey should be carried out after notice to both the parties. The records disclose that the Inspector of City Survey, Thane had carried out the said survey on 27/11/2003 in the presence of both the parties and has, accordingly, prepared the plan showing the location of the land described by the petitioners as Pardi No.1 and that report and the plan drawn, further discloses that the part of the land described by the petitioners had already been acquired by the railways and, in the said area, the railways have laid the track in question. The report apparently discloses that the measurements were taken in the presence of the parties and both the parties had accepted the said situation in loco while the report prepared by the concerned Officer. The learned counsel appearing for the petitioners, however, has sought to argue that there has been no

compensation paid to the petitioners at any point of time in spite of the fact that the ownership and possession of the land in question is clearly established in favour of the petitioners on the basis of 7 x 12 Extract. Undoubtedly, names of various persons including that of the petitioners are enlisted as the occupants in relation to the Pardi No.1 in the records of right. "Occupant" as defined under the Maharashtra Land Revenue Code under section 2(23) means a holder in actual possession of unalienated land, other than a tenant or Government lessee; provided that, where a holder in actual possession is a tenant, the landholder or the superior landlord, as the case may be, shall be deemed to be the occupant. The expression "to hold land" or "to be a landholder or holder of land" has been defined under section 2(12) of the Maharashtra Land Revenue Code to mean to be lawfully in possession of land, whether such possession is actual or not.

6. In the background of the facts stated in the affidavit of the respondents, it is apparent that the respondents clearly admit that though the land has been acquired and the possession of the acquired land has been taken with the consent of the land owners, no compensation was paid as no claim for compensation was

filed by any person. Being so, merely because the names of the occupants continue to appear in the records of right in relation to the land acquired by the railways that, by itself, will not lead to the conclusion that the persons whose names appear in such records continue to be in actual and factual possession of the area which is already occupied by the railways for laying tracks. As already seen above, even the definition of the expression "to hold land" or "to be a landholder or holder of land" means to be lawfully in possession of the land, whether such possession is actual or not. So also, "occupant" is the person defined as a holder in actual possession. Being so, merely because names appear as occupants in the records of right which may be considered as occupants in lawful possession, such possession need not be an actual possession. The name may continue, still, on all scores, interest of such occupant is terminated in the land which has been acquired. Merely because some interest in relation to the claim for compensation may survive, it cannot be said that the property is stopped from being vested in the Government once the land is acquired and the possession thereof is taken. If one peruses the provisions of the Land Acquisition Act, 1894 and the scheme of the said statute, it is apparent that once

the Land Acquisition Officer passes an award and the possession of the land which is the subject matter of the award is taken over by the Government, the land vests free from all encumbrances in the Government. Nevertheless, if the owner or the person interested in the land is not compensated on account of such acquisition, his right to claim compensation would not cease. Certainly, such person can proceed to seek compensation under the provisions of section 18 of the said Act. Being so, merely because the name of the petitioners continued in the records of right as the occupants in relation to the land in question, that itself will not lead to the conclusion that the acts on the part of the respondents in laying railway track in the land in question for such purposes would be illegal. Hence, the question of granting a declaration in the manner asked for, does not arise. Needless to say that, in case, petitioners are, in fact, persons interested in relation to the land in question, certainly they would be entitled to claim compensation. As regards such claim, petitioners will have to adopt regular remedy for claiming compensation and it will not be possible for this Court in writ jurisdiction to ascertain the compensation for the land acquired by the railways.

7. For the reasons stated above, therefore, the Petition fails and is hereby dismissed with no order as to costs. Rule stands discharged.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)